

## CIRCUIT RULE 33-1

### SETTLEMENT PROGRAM -- APPEAL CONFERENCES

The primary purpose of a prehearing conference shall be to explore settlement of the dispute that gave rise to the appeal. The judge or court mediator may require the attendance of parties and counsel. Information disclosed to the judge or court mediator in settlement discussions shall be kept confidential and shall not be disclosed to the judges deciding the appeal or to any other person outside the settlement program participants. (Rev. 7/94) In the context of a settlement or mediation in a civil appeal, the parties who have otherwise settled the case may stipulate to have one or more issues in the appeal submitted to an appellate commissioner for a binding determination. (New 7/2001)

### CIRCUIT ADVISORY COMMITTEE

#### NOTE TO RULE 33-1

*(a) **Appeal Settlement Conferences.** The settlement program is staffed with experienced attorney mediators and is an independent unit in the court. In any civil case in which a civil appeals docketing statement must be filed, the court may direct that a settlement conference be held, in-person or over the telephone, with counsel, or with counsel and the parties or key personnel, including insurance representatives. A judge who conducts a settlement conference pursuant to this rule will not participate in the decision on any aspect of the case, except that he or she may vote on whether to take a case en banc.*

*If a case is selected for a settlement conference, counsel shall be notified, by order entered within 35 days of the docketing of the appeal or petition, of the date and time of the conference and whether the conference will be in-person or by telephone. The initial conference normally shall be held within 56 days of the docketing of the appeal. A case is presumed released from the Conference Program if an order scheduling a settlement conference has not been entered within 56 days of the docketing of the appeal or petition.*

*Requests by counsel for a settlement conference will be accommodated whenever possible. Parties may request conferences confidentially, either by telephone or by letter directed to the chief circuit court mediator.*

*The briefing schedule established by the Clerk's office at the time the appeal is docketed remains in effect unless adjusted by a court mediator to facilitate settlement, or by the Clerk's office pursuant to Circuit Rule 31-2.2.*

*Counsel should discuss settlement with their principals prior to a conference scheduled under this rule and attend the conference with authority to settle.*

*(b) **Appeal Case Management Conference.** In any case the court may direct either sua sponte or upon request of a party that a telephone or in-person case management conference be held before an appellate commissioner, a senior staff member in the Clerk's office, or a staff attorney. The purpose of a case management conference is to manage the appeal effectively and develop a briefing plan for complex appeals. If a case is selected for a case management conference, counsel shall be notified by order of the date and time of the conference. Case management conferences are held only in exceptional circumstances, such as complex cases involving numerous separately represented litigants or extensive district court/agency proceedings. (Rev. 1/97)*

*(c) **Binding Determinations by Appellate Commissioner.** In the context of a settlement or mediation in a civil appeal, the parties may stipulate to having one or more issues in their appeal referred for a binding determination by an Appellate Commissioner. Where the parties enter into such a stipulation, the matter may be handled with abbreviated and accelerated briefing and a guaranteed opportunity for in-person or telephonic oral argument before the Appellate Commissioner. The Appellate Commissioner will issue a determination and, if requested, a written statement of reasons. The determination will have no precedential effect and will be final and nonreviewable. Cases will ordinarily be referred to the Appellate Commissioner through the court's mediation program. In some instances, the court's pro se unit may also alert parties to the availability of this program. For further information, please contact the Circuit Mediation Office at (415) 556-9900. (New 7/2001)*